

## The Payment of Gratuity Act, 1972

### Learning Objectives

In this Chapter, the students come to know

- ◆ To whom Gratuity is payable?
- ◆ How to calculate the amount of Gratuity payable?
- ◆ When Gratuity will be forfeited?
- ◆ Procedure for nomination in respect of Gratuity payment.

### 5.1 An Introduction

Gratuity is a word derived from a Latin word 'Gratuitas' which simply means a 'Gift.' In the industrial sector, it can be treated as a gift from the employer to his employee for the services rendered to his establishment by him for the development and prosperity of the same. Gratuity is a benefit, which an employee gets at the time of retirement or when he leaves the establishment. Gratuity is a amount (as a lump sum payment) which is paid by an employer to his employee for his past services when the employment comes to an end due to the retirement or superannuation of the workers. Thus, this gratuity scheme serves as an instrument of social security as well as a reward to a person who sacrifices his whole life in the betterment, development and prosperity of an establishment, and in other way for the Nation. Today the payment of gratuity have become a statutory obligation of employers and a statutory right of the employees to claim through the way of an enactment, the Payment of Gratuity Act, 1972. The Act provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected with or incidental to them.

### 5.2 Aims and Objects of the Act:

The Payment of Gratuity Act, 1972 was laid down to provide for a uniform scheme for payment of gratuity to employees through out the country. Earlier there was no Central Act to regulate the payment of Gratuity to the workers. The bill was drafted on the basis of the West Bengal Employees' Payment of Gratuity Act, 1971 with some modification which was made in the light of the views expressed at the Indian Labour Conference relating to the forfeiture of gratuity in cases of dismissal for gross misconduct.

Initially, the Bill provided for gratuity to the employees drawing wages upto ₹ 270/- per month in factories, Plantations, shops, establishments and mines, in the event of superannuation, retirement, resignation and death or total disablement due to accident or diseases. The quantum of gratuity payable will be 15 days' wages based on the rate of wages last drawn by the employees concerned for every completed year of service or part thereof in excess of six months subject to a maximum of 15 months' wages.

It was proposed that the appropriate Government for administering the Act in relation to establishment belonging to or under the control of the Central Government or a railway company, or mine, a major port and oilfield or in relation to establishments having departments or branches in more than one State, will be the Central Government, and in relation to other establishments, the State Government.

### Act 39 of 1972

The Central legislation for the Payment of Gratuity was passed in the year 1972 and came into force on 16<sup>th</sup> September, 1972 as THE PAYMENT OF GRATUITY ACT, 1972 (39 of 1972). This Act was amended time to time as per requirement, the years 1984, 1987, 1994 and 1998, 2009, 2010.

### 5.3 Extent & Applicability:

The Act extends to the whole of India. Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu & Kashmir. [Section 1(2)].

The Act applies to:

- ◆ Every factory, mine, oilfield, plantation, port and railway company;
- ◆ Every *shop or establishment* within the meaning of any law for the time being in force in relation to shops and establishments in a state, *in which 10 or more persons* are employed, or were employed, on any day of the preceding twelve months;
- ◆ *Such other establishments or class of establishments*, in which 10 or more employee are employed, or were employed on any day of the preceding twelve months, *as the Central Government, specify in this behalf.* [Section 1(3)]
- ◆ A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the *number of persons employed therein at any time after it has become so applicable falls below ten.* [Section 1 (3 A )]

The expression 'law' used in Section 1(3)(b) means any law in respect of shops, establishments - commercial or non-commercial. (*K. Gangadhar Vs The Appellate Authority, (1993) 66 FLR 648(AP).*)

The provisions of Section 1(3)(b) of the Act are very much comprehensive. It also includes Municipal Board. (*Municipal Board Vs Union of India, (1993) 67 FLR 973 All*)

In exercise of the powers conferred by clause (c) of Section 1(3) of the Act, the Central Government has specified Motor Transport undertakings, clubs, chambers of commerce and industry, inland water transport establishments, Solicitors' Offices, Local Bodies and circus Industry, in which 10 or more persons are employed or were employed on any day of the preceding 12 months, as classes of establishments to which the Act shall apply. Once this Act becomes applicable to a shop or establishments, it will continue to govern by it even if the number of employees falls below 10 after the application of the Act.

Application of the Act to an employed person depends on two factors (i) he should be employed in an establishment to which the Act applies & (ii) he should be an employee under the definition of Section 2(e) of the Act.

## 5.4 Important Definitions

### (1) Appropriate Government means:

In relation to an establishment -

- ◆ belonging to, or under the control of the Central Government,
- ◆ having branches in more than one state,
- ◆ of a factory belonging to, or under the control of the Central Government,
- ◆ of a major port, mine, oilfield or railway company, the Central Government,

In any other case, the State Government; [Section 2 (a)]

### (2) Completed Year of Service means continuous service for one year [Section 2 (b)]

### (3) Employee means any person (other than an apprentice) who is -

- ◆ employed for wages, whether the terms of such employment are express or implied,
- ◆ employed in any kind of work, manual or otherwise,
- ◆ employed in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person-
- ◆ who holds a post under the Central Government or a State Government, and
- ◆ post which is governed by any other Act or by any rules providing for payment of gratuity

[Note: This is the new definition, amended by the Payment of Gratuity (Amendment) Act, 2009, w.e.f 3-4-1997.[Section 2(e)], This amendment in the definition made teachers entitled to gratuity vide Notification SO1080, dated 3-4-1997 by Ministry of Labour and Employment]

Decision given by the court in the case *Khanderan P. Rajopadhyee v. United Western Bank Ltd.* 1984 Lab IC 1910, laid that mere nomenclature of a post is not of much

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consequence and what is to be seen is the nature of the duties performed by the employee to conclude him as an employee within the meaning of section 2(e) of the Act.

A company director not having a ultimate control over the affairs of management of the company will be considered as an employee under the Act [*Monitron Securities (p) Ltd. v. Mukundlal Khushalchand (2002) 1 cur LR 507 Guj*]

### (4) Employer Means:

- ◆ In relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop –
  - (i) Belonging to, or under the control of the Central Government or a State Government a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,
  - (ii) Belonging to, or under the control of any local authority, the person appointed by such authority for the supervision, and control of employees or where no person has been so appointed, the chief executive officer of the local authority,
  - (iii) In any other case, the person, who, or the authority which has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name,
- there such person shall be the employer[Section 2 (f)]

### (5) Factory: 'factory' has the meaning assigned to it in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948); [Section 2 (g)]

### (6) Family: In relation to an employee, shall be deemed to consist of –

- ◆ In the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents (and the dependent parents of his wife and the widow) and children of his predeceased son, if any,
- ◆ In the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any;

### Explanation:

Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his/her family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee. [Section 2 (h)]

### (7) Retirement: Means termination of the service of an employee otherwise than on superannuation;

[Section 2 (q)]

- (8) **Superannuation:** In relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service at the age on the attainment of which the employee shall vacate the employment. [Section 2 (r)]
- (9) **Wages:** Means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes D.A. but does not include any bonus, commission, house rent allowance, overtime wages and any other allowances. [Section 2 (s)]

Free food supplied to an employee is merely an amenity. Hence its value cannot be included in the wages for the purpose of calculating the amount of gratuity payable under the Act. [*N. Sivasadan v. Appellate Authority under the Payment of Gratuity Act(1997)* 1 LLJ1155 Mad DB]

- (10) **Continuous Service 2:** [Section 2A]: *Continuous service means service without interruption or break.*

For the purposes of this Act –

- ◆ An employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act; [Section 2A(1)]
- ◆ Where an employee (**not being an employee employed in a seasonal establishment**) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer –

**For the said period of one year,** if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –

- i One hundred and ninety days, in the case of any employee employed below, the ground in mine or in an establishment which works for less than six days in a week; and
- ii Two hundred and forty days, in any other case; [Section 2A clause (2) (a)]

**For the said period of six months,** if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than –

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- i. Ninety five days, in case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and
- ii. One hundred and twenty days, in any other case; [ Section 2A clause (2)(b)]

### Explanation:

For the purpose of clause (2) the number of days on which an employee has actually worked under an employer shall include the days on which –

- ◆ he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
- ◆ he has been on leave with full wages, earned in the previous year,
- ◆ he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- ◆ in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Where an **employee, employed in a seasonal establishment**, is not in continuous service within the meaning of clause(1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy- five per cent of the number of days on which the establishment was in operation during such period.

An employee who is *re-employed without any break* in service will be eligible for gratuity and he can not be denied to get the gratuity simply on the ground of the change in employment. [*Jeevan Lal (1929) Ltd. Vs controlling authority; (1982)1 LLN(217)*]

A retrenched employee is also entitled for gratuity, it was held in the case of State of Punjab Vs Labour Court (1980)1SCR 953

Wherever a partnership is converted into a registered company, there the employees are entitled to gratuity on the basis of length of service under both the establishments taken together [*Bommidala Bros. v. Authority, the Payment of Gratuity Act(1989) 1 cur LR 595 AP*]

### (11) Controlling Authority:

The Appropriate Government may, by notification, appoint any officer to be a controlling authority, who shall be responsible for the administration of this Act and different authorities may be appointed for different areas. [Section 3]

### Key Points:

- ◆ Lump sum amount of money payable by an employer to his employee at the time of-

termination of the service, retirement, superannuation, resignation, disablement or death is termed as gratuity.

- ◆ The Act applies to- (i) Every factory, mine, oilfield, plantation, port and railway company, (ii) Every shop and establishment with ten or more persons are employed/were employed, on any day of the preceding twelve months (iii) Other establishments/ class of establishments with ten or more employees are employed/ were employed on any day of the preceding twelve months, as the Central Government may by notification specify in this behalf.
- ◆ Wages- All emoluments earned by an employee while- (i) on duty or on leave as per the terms of his employment, and (ii) which are paid or payable to him in cash. It includes dearness allowance but does not include- any bonus, commission, house rent allowance, overtime wages and any other allowance.
- ◆ Continuous service- Any employee is said to be in continuous service for a period if he has been in uninterrupted service for that period. This also includes service which may be interrupted on account of- sickness, accident leave absence from duty without leave, lay off, strike, lock-out, cessation of work.
- ◆ Continuous service for 1 year can be said - where employee has actually worked under the employer for not less than (i) 190 days, in case of employee employed below the ground in a mine/ in an establishment which works for less than six days in a week, and (ii) 240 days in any other case.
- ◆ Continuous service for 6 months can be said- where an employee actually worked for not less than (i) 95 days, in case of employee employed below the ground in a mine/ in an establishment which works for less than six days in a week, and (ii) 120 days in any other case.
- ◆ Continuous service in seasonal establishment- where an employee employed for such period has actually worked for not less than 75 % of the number of days on which establishment was in operation during such period.

### 5.5 Payment of Gratuity: [Section 4(1)]

Gratuity shall be payable to an 'employee' on the termination of his employment after he has rendered continuous service for not less than five years –

- ◆ On his superannuation, or
- ◆ On his retirement or resignation, or
- ◆ On his death or disablement due to accident or disease;

The condition of the completion of five years continuous service is not essential in case of the termination of the employment of any employee due to death or disablement. Generally, it is payable to the employee himself. However, in case of death of the employee it shall be paid to his nominee or if no nomination has been made, to his heirs.

The payability of Gratuity to the employee is his right as well as the obligation of the employer.

It is a statutory right given to the employees [Balbir kaur v. SAIL (2000) 6 SCC 493]. It becomes payable to an employee on the date of termination of his employment. [*Rashtriya Mill Mazdoor Sangh v. NTC* (1996) 1 SCC 313].

By the change of ownership, the relationship of employer and employees subsists and the new employer cannot escape from the liability of payment of gratuity to the employees; it was held in the case of *Pattathurila K. Damodaran Vs M. Kassim Kanju* (1993) 1 LLJ 1211 (Ker).

An employee resigning from service is also entitled to gratuity; (*Texmaco Ltd. Vs Sri Ram Dhan* 1992 LLR 369 (Del)) and non-acceptance of the resignation is no hurdle in the way of an employee to claim gratuity; (*Mettur Spinning Mills Vs Deputy Commissioner of Labour*, (1983) 11 LLJ 188).

For the purpose of this Section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

#### 5.6 Calculation of Gratuity Amount Payable: [Section 4(2)]

1. In the establishments *other than seasonal establishments*- the employer shall pay the gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned for every *completed year of service or part thereof in excess of 6 months*. In case of piece- rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

2. In case of an employee who is *employed in a seasonal establishment* can be classified into two groups

- ◆ those who work throughout the year &
- ◆ who work only during the season.

The former who are the monthly rated employee are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of six months. The later are, however, entitled to received gratuity at the rate of seven days' wages for each season.

In case of a *monthly rated employee*; the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen. In order to arrive at the figure of daily wage for the purpose of Section 4(2) of the Act, monthly wages is to be divided by 26 (*Hindustan Lever Ltd. Vs Kasargod Devidas Rao*, (1990) 61 FLR 6 231 (BOM))

#### Amount of Gratuity Payable: [Section 4(3)]



*The Payment of Gratuity (Amendment) Act, 2010* has amended section 4(3) of the Payment of Gratuity Act, 1972 by which the maximum amount of gratuity payable to an employee shall not exceed rupees ten lakhs. This amendment has become effective from 24<sup>th</sup> day of May, 2010 as per the Notification No. S.O.1217(E) of the Ministry of Labour and Employment (Earlier the ceiling on the gratuity amount was rupees three lakhs fifty thousand).

#### **Computation of Gratuity of disabled employee : [Section 4(4)]**

When an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in two parts –

- (i) **For the period preceding the disablement:** on the basis of wages last drawn by the employee at the time of his disablement.
- (ii) **For the period subsequent to the disablement:** On the basis of the reduced wages as drawn by him at the time of the termination of services.

In case of *Bharat Commerce and Industries Vs Ram Prasad, 2001 (LLR 918 (MP))* it was decided that if for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are better than the Act, the employee is entitled for that benefit but the maximum statutory ceiling limit as providing under Section 4(3) of the Act cannot be reduced by mutual settlement or agreement.

### **5.7 Forfeiture of Gratuity: [Section 4(6)]**

**1. Forfeiture to the extent of the damage/ loss:** If the services of an employee have been terminated for-

- (i) any act,
- (ii) willful omission, or
- (iii) negligence

causing any damage or loss to, or destruction of, property belonging to the employer- there the gratuity shall be forfeited to the extent of the damage or loss so caused;

**2. Wholly or partially forfeiture of gratuity:** (i) where if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude.

Provided that such offence is committed by him in the course of his employment, there the gratuity payable to the employee may be wholly or partially forfeited.

**Case law:** If the employer has to be paid any amount regarding any type of charge by the employee and he has not paid the same during the course of his service then the employer can adjust the amount from the gratuity of the employee at the time of the payment of the gratuity at the termination of his employment. In *Wazir Chand Vs Union of India 2001, LLR*

172 (SC), it was held that there was no illegality in the amount of gratuity, which was paid by the employer. The appellant even after superannuation continued to occupy the quarter and the government in accordance with the rules, charged the rent from him and after adjusting other dues, the gratuity amount offered to be paid.

In *Travancore Plywood Industries Ltd. Vs Regional Joint Labour Commissioner*, (1966) II LLJ 85 (Ker.) it was held that the refusal of employees to surrender land belonging to the employer is not a sufficient ground to withhold the gratuity.

In the case *Parmali Wallance Ltd Vs State of M.P.*, (1996) II LLJ 515 (MP), it was held that the right of the employer to forfeit the amount of earned gratuity of an employee whose services were terminated for any act, willful omission or negligence causing any damage to the employer is limited to the extent of the damage, and the proof of such damage.

When an offence of theft under law involves moral turpitude, gratuity stands wholly forfeited in view of Section 4(6) of the Act. [*Bharat Gold Mines Ltd. Vs Regional Labour Commissioner (Central)*, (1987) 70 FJR 11 (Kern.)]

But when an employee, who has been given the benefit of probation under Section 3 of the Probation of Offenders Act, 1958, cannot be disqualified to receive the amount of his gratuity. [*S.N.Sunderson (Minerals) Ltd. Vs Appellate Authority-cum-Deputy Labour Commissioner*, (1990) 60 FLR 6 (Summary) (M.P.)]

In the case of *K.C.Mathew Vs Plantation Corporation of Kerala Ltd.*, 2001 LLR (2) (Ker.), it was clearly held that withholding of gratuity is not permissible under any circumstances other than those enumerated in Section 4(6) of the Act and the right to gratuity is a statutory right and none can be deprived from such right.

## 5.8 Compulsory Insurance: [Section 4(A)]

**Employers liability to obtain insurance:** The Payment of Gratuity (Amendment) Act, 1987 has prescribed provisions for compulsory insurance for employees, which introduces employer's liabilities for payment towards the gratuity under the Act from LIC established under LIC of India Act, 1956 or any other prescribed insurance company. However, employer of an establishment belonging to or under the control of the Central Government or the State Government are exempted from the operations of these provisions.

**Exemption to the employers from obtaining insurance:** The Appropriate Government may also exempt (i) employers who have already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement; and (ii) employers having 500 or more employees, who establishes an approved gratuity fund in the manner prescribed.

**Employer to register his establishment with the controlling authority:** For the purposes of this Section, every employer shall within a prescribed time get his establishment registered with the controlling authority in the prescribed manner, and only those employers who have taken an insurance as referred above or has established an approved gratuity fund shall be

registered.

**Appropriate government may make rules:** To give effect to the provisions of this Section the appropriate government may make rules provided for the composition of Board of Trustees of the approved gratuity fund, and for the recovery by the controlling authority of the amount of gratuity payable to employees of LIC or any other insurer with whom an insurance has been taken, or as the case may be, the Board of Trustees of the approved gratuity fund.

**Employers failure to pay premium/ contribute to the gratuity fund:** If the employer fails to pay the premium to the insurance or to contribute to an approved gratuity fund, he shall be liable to pay them a amount of gratuity including interest, if any, for delayed payments, to the controlling authority.

**Penalty:** Its contravention is punishable with a fine upto ₹ 10000/- and in the case of a continuing offence with a further fine which may extend to ₹ 1000/- per day upto the duration the offence continues.

### 5.9 Power to Exempt: [Section 5]

The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act-

- (1) If in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.
- (2) If in the opinion of the appropriate Government, such employee or class of employees are, in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.
- (3) A notification issued under Sub-Section (1) or Sub-Section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially, affect the interests of any person.

The provisions of Section 5 of the Act empowers the appropriate Government to exempt any employer or the class of employers as well as the employee or the class of employees from the application of the Act provided that if there are existing beneficial provision regarding gratuity of the employees in comparison with the provisions of the Act it may be notified with retrospective effect but not before the date of commencement of the Act without any type of prejudication at all.

### 5.10 Nominations for Gratuity: [Section 6]

Normally, the gratuity is paid to the employee by his employer, where his services are

terminated due to any reason in his lifetime, but after the death of the said employee, the earned gratuity is to be paid to his successors and to avoid any type of complications and controversies, the provision of the nomination by the employee to get the gratuity, in case of his death is made. The provisions are as below:

**Nomination by the employee after the completion of 1 year of service:** Each employee, who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to Sub-Section (1) of Section 4.

**Distribution of gratuity amount :** An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.

**Nomination in favour of one or more family members:** If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.

**Nomination by the employee having no family/ subsequently acquiring family:** If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

**Modification in nomination by the employee:** A nomination may, subject to the provisions of Sub-Sections (3) and (4) be modified by an employee at any time, after giving to his employer a written notice in such form and in such a manner as may be prescribed, of his intention to do so.

**In the case of death of nominee:** If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.

**Nomination to kept by the employer:** Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

**Procedure for Nomination:**

- 1. Nomination form to be submitted in duplicate to the employer:** A nomination shall be filled in Form 'F' and will be submitted in duplicate by personal service by the employee, after taking proper receipt or by sending through registered post acknowledgement due to the employer.
- 2. Submission of the form:** In case of an employee who is already in employment for a year or more on the date of commencement of these rules, ordinarily, within ninety days from such date, and in case of an employee who completes one year of service after the date of commencement of these rules, ordinarily within thirty days of the completion of one year of service.
- 3. Acceptance of form beyond the specified time:** Form 'F' filed with reasonable grounds for delay, shall be accepted by the employer after the specified time and no

nomination so accepted shall be invalid because of the reason that it was filed after the specified period. [Rule 6(1)]

Within 30 days of the receipt of nomination in Form 'F', the employer shall get the service particulars of the employee, as mentioned in the form, verified with reference to the records of the establishment and return one copy to the employee, after obtaining a receipt thereof, the duplicate copy of Form 'F' duly attested by the employer or his authorized signatory and the other one shall be recorded for future in his office. [Rule 6(2)]

**4. Period for submission of fresh nomination after acquiring a family:** If an employee has no family at the time of his first nomination, then within 90 days of acquiring a family, he will submit a fresh nomination in duplicate on Form 'G' to the employer. [Rule 6(3)]

**5. Notice of modification of nomination:** A notice of modification of a nomination, including the case where the nominee predeceases an employee, shall be submitted in duplicate in Form 'H' to the employer. In both of cases as in (3) & (4), the rest procedure will be as mentioned in sub rule (1) & (2) shall apply.

**6. Nomination duly signed by the employee:** A nomination or a fresh nomination or a notice of modification of nomination shall be duly signed by the employee and if he is illiterate, shall bear the thumb impression of the employee in presence of two witnesses, who shall also sign a declaration to that effect in the nomination, fresh nomination or notice of modification of nomination, as the case may be, and it shall take effect from the date of receipt thereof by the employer.

**Key Points:**

- ◆ Gratuity shall be payable to an employee after rendering continuous services for not less than 5 years.
- ◆ Persons entitled to receive gratuity- (i) employee himself (ii) employee's nominee, in case of his death (iii) employees' heirs, if no nominees (iv) Nominees/ heirs if minor, gratuity shall be deposited to the Controlling Authority.
- ◆ Computation of gratuity: For every completed year of service or part thereof in excess of six months- The employer shall pay gratuity at the rate of 15 days wages. It is based on the rate of wages last drawn by an employee.
- ◆ Monthly rated employee- 15 days wages shall be calculated by –  
dividing the monthly rate of wages last drawn by 26 and multiplying the quotient by 15
- ◆ Piece rated employee- daily wages shall be computed on the average of total wages received by him for a period of three months immediately preceding the termination of his employment.
- ◆ Employee in a seasonal establishment- where an employee who work only during the season is entitled for the gratuity at the rate of seven days wages for each season.
- ◆ The amount of gratuity payable to an employee shall not exceed ₹ 10 lakhs.

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- ◆ Gratuity shall be paid within 30 days from the employer, in failure, the employer shall pay the simple interest on the gratuity amount from the date on which the gratuity becomes payable to the date on which it is paid.
- ◆ An employee who has completed 1 year of service, shall make nomination for the purpose of payment of gratuity in case of his death.

### 5.11 Application for the Payment of Gratuity: [Section 7 and Rule 7]

- (1) An employee who is eligible for payment of gratuity under the Act, or any person authorized, in writing, to act on his behalf, shall apply, ordinarily within 30 days from the date of the gratuity became payable, in Form 'I' to the employer.

But if the date of superannuation or retirement of an employee is known, the employee may apply to the employer before 30 days of the date of superannuation or retirement.

- (2) A nominee of an employee who is eligible for payment of gratuity in case of death of the employee, shall apply to the employer ordinarily within 30 days from the date of the gratuity becomes payable to him in the Form 'J'.

An application on plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

- (3) If an employee dies without making a nomination, his legal heir, who is eligible for the payment of gratuity, shall apply, ordinarily within one year from the date of gratuity became payable to him in form 'K' to the employer.

An application even after the prescribed period shall also be entertained by the employer, if the sufficient cause for delay has been mentioned in the application. Any dispute in this regard shall be referred to the Controlling Authority for his decision. In any case, the claim for gratuity cannot be treated as invalid merely because the claimant failed to submit the application within the prescribed time.

The application shall be presented to the employer either by personal service or by registered post with A/D. [Rule 7]

### 5.12 Employer's Duty Regarding the Payment:

1. **Determination of the amount of gratuity by the employer:** As soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling officer specifying the amount of gratuity so determined [Section 7(2)]

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming due/payable to the person to whom it is payable.[Section 7(3)]

2. **Provision of interest on gratuity amount:** If the amount of gratuity payable under Sub-

Section (3) is not paid by the employer within the period specified i.e. 30 days, the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as the Government may, by notification specify.

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the Controlling authority for the delayed payment on this ground. [Section 7(3A)]

### 3. Notice for payment of gratuity:

(i) **Claim for gratuity found to be admissible** -If the claim for gratuity *is found admissible* on verification, the employer shall issue a notice in Form 'L' to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the 30<sup>th</sup> day after the date of receipt of the application, for payment thereof, or

(ii) **If the claim for gratuity is not found admissible**- employer shall issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible.

(iii) **Issue of notice to the applicant**-In either of the case, within 15 days of the receipt of an application for the payment of gratuity, the notice has to be issued by employer to the applicant employee, nominee or legal heir, as the case may be, alongwith a copy endorsed to the controlling authority.

(iv) **Claimant is nominee/ legal heir**- If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim. In that case, the time limit specified for issuance of notices shall be operative with effect from the date such witness or evidence, called for by the employer is furnished to the employer.

(v) **Service of notices on the applicant**-The notices on Form 'L' or 'M' shall be served on the applicant either by personal service after taking receipt or by registered post with A/D. (Rule 8)

### 5.13 Mode of Payment of Gratuity:

The gratuity shall be paid either-(i) in cash, or (ii) in demand draft, or (iii) bank cheque to the claimant. If the claimant so desires and the amount of gratuity payable is less than one thousand rupees, payment may be made by postal money order after deducting the commission due to such postal money order from the amount payable. The intimation about the details of payment shall be given to the controlling authority by the employer.

**Where nominee or a legal heir is a minor**- there the controlling authority shall invest the gratuity amount deposited with him for the benefit of such minor in term deposit with the State

Bank of India or any of its subsidiaries or any Nationalized Bank. (Rule 9)

#### 5.14 Disputes:

**(1) Filing of application on the dispute relating to the payment of gratuity-** If there is any dispute regarding the amount of gratuity payable to an employee or as to the admissibility of any claim of or in relation to, an employee for payment of gratuity or as to the person entitled to receive the gratuity, the employer shall deposit, such amount as he admits to be payable by him as gratuity, to the controlling authority and for these (one or all) other person raising dispute may make an application to the controlling authority for deciding the dispute.

**(2) Payment of gratuity amount after inquiry and hearing of the parties to the disputes-** The controlling authority shall, after due inquiry and after giving the reasonable opportunity of being heard to the parties to the dispute, determine the matter or matters in dispute. After such inquiry if any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or the difference of amount so determined and the amount already deposited by the employer to the controlling authority. The controlling authority shall pay the amount deposited by the employer including the excess amount, if any, to the person entitled thereto.

**(3) Payment of the amount, where there is no dispute-** As soon as the employer made the said deposit, the controlling authority shall pay the amount to the applicant where he is the employee or where the applicant is not the employee, to the nominee or as the case may be, the guardian of such nominee or legal heir of the employee, if he is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity. For the purpose of conducting inquiry, the controlling authority shall have the same powers as are vested in the court, while trying a suit, under the Code of Civil Procedure, 1908. The proceedings made by him will be the 'judicial proceedings' within the meaning of Sections 193 & 228 & for the purposes of Section 196, IPC. The controlling authority will avail all the powers like enforcing the attendance, production of documents, receiving evidences on affidavits and issuing commission for the examination of witnesses. [Sections 7(4), 7(5), & 7(6)]

**Application to controlling authority for direction:** If an employer refuses to accept nomination or to entertain an application sought to be filed for the payment of gratuity or issues a notice either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity or having received an application for the payment of gratuity and fails to issue any notice as required within the specified time (i.e. within 15 days ) the claimant (employee, nominee or legal heir, as the case may be) may, within 90 days of the occurrence of the cause for the application, apply in Form 'N' to the controlling authority for issuing a direction under Section 7(4) with as many extra copies as are the opposite parties.

The controlling authority may accept any application on sufficient cause being shown by the applicant, after the expiry of the specified period also.



The said application and other relevant documents shall be presented in person to the controlling authority or shall be sent to him by registered post with A/D (Rule 10).

### 5.15 Procedure for Dealing with Application for Direction:

(1) **Issue of notice to appear before controlling authority-** On receipt of an application for direction, the controlling authority shall issue a notice in Form 'O' to call upon the applicant as well as the employer to appear before him on a specified date, time and place, either by himself or through his authorized representative alongwith all the relevant documents and witnesses, if any.

(2) **Representation on behalf of the employer/ claimant before the Controlling Authority-** Any person desiring to act on behalf of an employer or the claimant shall present a letter of authority from the person concerned to the controlling authority alongwith a written statement explaining his interest in the matter and praying for permission to act so. The controlling authority shall record an order thereon either according to his approval or specifying the reasons, in case of refusal to grant the permission. A party appearing through his authorised representative shall be bound by the acts of his representative. After completion of hearing on the date fixed, or after such further evidence, examination of documents, witnesses, hearing and enquiry, as may be deemed necessary, the controlling authority shall record his findings as to whether any amount is payable to the applicant under the Act. A copy of the finding shall be given to each of the parties.

(3) **Employers fails to appear-** If the employer fails to appear on the specified date of hearing after due service of notice without sufficient cause, the controlling authority may proceed to hear and determine the application ex parte and if the applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application.

(4) **Review of order-** The order passed may be reviewed on good cause being shown within 30 days of the said order and the application re-heard after giving not less than 14 days notice to the opposite party of the date fixed for rehearing of the application.[Rule 11]

(5) **Record of particulars of case-** The controlling authority shall record the particulars of each case in Form 'Q' and at the time of passing orders shall sign and date the particulars so recorded and shall also record the findings on the merits of the case and file it alongwith the memorandum of evidence with the order sheet. [Rule 16]

**Direction for payment of gratuity:** If the findings are recorded that the applicant is entitled for the payment of gratuity under the Act, the controlling authority shall issue a notice to the employer concerned on Form 'R' specifying the amount payable and directing payment thereof to the applicant, under intimation to the controlling authority within 30 days from the date of the receipt of the notice, by the employer. A copy of the notice shall be endorsed to the applicant also. [Rule 17]

### 5.16 Appeals

(1) **Appeal to an order-** Any person aggrieved by an order made by the Controlling Authority may, within 60 days from the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf. After being satisfied with sufficient cause, he may extend this period by a further period of 60 days.

(2) **Modification of an order-** The Appropriate Government or the Appellate Authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the Controlling Authority.

(3) **Admission of appeal on the production of the certificate of the deposit of gratuity-** The employer's appeal shall not be admitted without producing the certificate of deposit of gratuity amount issued by the Controlling Authority or the deposit of the said amount with Appellate Authority [Section 7 (7)].

### 5.17 Appointment of Inspectors

By notification, the appropriate Government may appoint as many Inspectors, as it deems fit, for the purposes of the Act. The Appropriate Government may, by general or special orders, define the area to which the authority or an Inspector so appointed shall extend and where two or more Inspectors are appointed for the same area, also provide, by such order, for the distribution or allocation of work to be performed by them. Every inspector shall be deemed to be a public servant within the meaning of Section 21 of the IPC [Section 7(A)].

**Powers of inspectors:** An inspector may exercise all or any of the following powers, for the purpose of ascertaining the compliance of the various provisions of the Act, namely,

- To require an employer to furnish such information as he may consider necessary,
- To enter and inspect, at all reasonable hours, any premises of or place in any factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, for the purpose of examining any register, record or notice or other documents required to be kept or exhibited under this Act or the rules made thereunder.
- To examine the employer or any person whom he finds in such premises or place and who, he has reasonable cause to believe is an employee employed therein.
- To make copies of, or take extracts from, any register, record, notice or other document, as he may consider relevant, and where he has reason to believe that any offence under this Act has been committed by an employer, search and seize with such assistance as he may think fit, such register, record, notice or other document as he may consider relevant in respect of that offence,
- to exercise such other powers as may be prescribed.

Any person required to produce any type of document or to give any information by an inspector shall be deemed to be legally bound to do so within the meaning of Sections 175 and 176 of the IPC and the provisions of the Code of Criminal Procedure, 1973 shall apply to

any search or seizure under this Section as they apply to any search or seizure made under the authority of a warrant issued under Section 94 of the code.

In this way, we can say that the inspector has got all the executive powers to implement the provisions of the Act [Section 7(B)].

Machinery for enforcement of the act or rules in central spheres: All Assistant Labour Commissioners (Central) have been appointed as Controlling Authorities and all the Regional Labour Commissioners (Central) as Appellate Authorities.

### 5.18 Recovery

If the amount of gratuity payable under the Act is not paid by the employer within the prescribed time, to the person entitled thereto, the controlling authority shall issue a certificate for that amount to the Collector to recover the same alongwith the compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears to enable the person entitled to get the amount after receiving the application from the aggrieved person [Section 8]

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate.

The amount of interest payable under this Section shall not exceed the amount of gratuity payable under this Act in no case. [Section 8]

**Application for recovery of gratuity:** Where an employer fails to pay the gratuity due under the Act in accordance with the notice by the Controlling Authority, the employee concerned, his nominee or his legal heir, as the case may be to whom the gratuity is payable may apply to the Controlling Authority in duplicate in Form 'T' for the recovery of gratuity. [Rule 19]

#### Penalties:

(1) **Penalty for avoiding of any payment to be made:** Any person who is responsible for the purpose of avoiding any payment to be made by himself or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with the imprisonment for the term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

(2) **Penalty for contravention and default in compliance of any provision:** An employer, who contravenes or makes default in complying with, any of the provisions of this Act or any rule or order made there under shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than Rs.10000/- but which may be extended to twenty thousand rupees or with both.

(3) **Penalty for non-payment of gratuity payable under the Act-** If the offence relates to non-payment of any gratuity payable under the Act, the employer shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years unless the court trying the offence, for the reasons to be recorded by it in writing, is of

## 5.20 Business Law, Ethics and Communication

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the opinion that a lesser term of imprisonment or the imposition of a fine would meet the ends of justice. [Section 9]

### Key Points:

- ◆ Where an employer makes a default /avoids the payment of gratuity- imprisonment for a term extending 6 months, or with fine extending to ₹ 10,000 or with both.
- ◆ Where an employer contravenes in complying with any of the provisions of this Act or any rule or order made under this Act- imprisonment not less than 3 months extending to one year, or with fine which shall not be less than ₹ 10,000/- but may be extending to ₹ 20,000/- or with both.
- ◆ In case of non- payment of gratuity - imprisonment for a term not less than six months but which may be extended to two years.

## 5.19 Exemption of Employer from Liability

Where an employer is charged with an offence punishable under this Act, he can, after giving three days clear notice of his intention to do so, bring any other person whom he charges as the actual offender, before the court at the time fixed for hearing the charge, and if, after the offence has been proved, employer proves to the satisfaction of the court that-(i) he has used due diligence to enforce the execution of this Act, and (ii) the said person committed the offence in question without his knowledge, consent or connivance. There the other person responsible for the occurrence shall be convicted of the offences and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under the Act in respect of such offence. [Section 10]

## 5.20 Cognizance of Offences

No Court shall take cognizance of any offence punishable under this Act except on a complaint made by or under the authority of the appropriate Government.

Where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time- there appropriate Government shall authorise the Controlling Authority to make a complaint against the employer.

The Controlling Authority shall within 15 days from the date of such authorization, make such complaint to a magistrate having jurisdiction to try the offence and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. [Section 11]

## 5.21 Protection against Action taken in Good Faith

If a Controlling Authority or any other person in respect of anything take any action, which is done in good faith or intended to be done under this Act or any Rule or any other- in such case no suit or other legal proceedings can be instituted against him because it will be presumed that he has taken all the actions to implement or comply the provisions of the Act on behalf of Government. [Section 12].

## 5.22 Protection of Gratuity

In any case, gratuity cannot be attached in execution of any decree or order of any civil, revenue or criminal court.[Section 13]

## 5.23 Miscellaneous

**Power to make rules:** The Appropriate Government may, by notification, make rules for the purpose of carrying the provisions of the act. In exercise of this power, the central government has made The Payment of Gratuity (Central) Rules, 1972, *Vide Notification G.S.R.412 (E),dated. 16.09.1972 published in part-ii, section. 3, Sub-section. (i) of the Gazette of India, extraordinary, dated. 16.09.1972.*

**Notice of opening, change or closure of the establishment:** A notice shall be submitted by the employer to the controlling authority of the area within 30 days of any change in name, address, employer or nature of business. Where an employer intends to close down the business he shall submit a notice to the controlling authority at least 60 days before the intended closure.

**Display of notice:** The employer shall display a notice at or near the main entrance of the establishment in bold letters in English and in the language understood by the majority of the employees specifying the name of the officer with designation authorized by the employer to receive on his behalf notices under the acts and rules made there under.

**Display of abstract of the act & rules:** The employer shall display an abstract of the Payment of Gratuity Act and the rules made there under in English and in other language understood by the majority of the employees at the important place at or near the main entrance of the establishment in form 'u'.